

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATION BOARD  
REGION 9

MOOSE INTERNATIONAL, INC., AND  
POINT PLEASANT LODGE NO. 731,  
LOYAL ORDER OF MOOSE, INC. <sup>1/</sup>

Employers

and

Case 9-RC-17928

UNITE HERE! LOCAL 863, AFL-CIO <sup>2/</sup>

Petitioner

**DECISION AND ORDER**

**I. INTRODUCTION**

The Employers are separately incorporated, non-profit corporations, organized to give legal form to certain aspects of a fraternal society – the Loyal Order of Moose (the Order). Moose International Inc. (Moose International) provides support, a scheme of organization and operation, and oversight to a system of semi-autonomous lodges of which Point Pleasant Lodge No. 731, Loyal Order of Moose, Inc. (Lodge 731) is one. The Petitioner has filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of employees who work at the building and grounds owned by Lodge 731 in Point Pleasant, West Virginia. The parties generally agree as to the employees who would constitute an appropriate unit at this location. The parties disagree as to whether the two corporations are a single employer, the Employers asserting that Lodge 731 is separately and solely the employer of the employees in issue. The Petitioner believes that the two corporations are a single employer of these employees.

Initially, I note that if the corporations were a single employer, the combined economic activity of both would meet any jurisdictional standard utilized by the Board. However, the economic activity engaged in solely by Lodge 731 does not meet the Board's jurisdictional standard that I apply to these operations – the retail standard. The Petitioner, contrary to the Employer, calls into question my use of this standard.

I have carefully considered the evidence and the arguments presented by the parties on the single employer and jurisdictional issues, including that contained in their briefs, and for the

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<sup>1/</sup> The Employers' names appear as amended at the hearing and in conformity with my determination that they are two separate employers.

<sup>2/</sup> The Petitioner's name appears as amended at the hearing.

reasons set forth in detail below, I conclude that Lodge 731 is the sole employer of the employees in the unit sought and that the nature of its operations indicate that the retail standard, requiring \$500,000 annual gross revenue, is to be applied. Because Lodge 731 does not meet this standard, I find that the petition must be dismissed.

## **II. BACKGROUND**

The Loyal Order of Moose is an international fraternal organization founded in 1888 and operates a system of lodges. The Supreme Lodge of the World, Loyal Order of Moose, is the governing body of this system of fraternal lodges and the allied Women of the Moose chapters. In 1908 a corporation was established under the laws of Indiana, which after multiple reorganizations and amendments is now styled "Moose International, Inc." The Supreme Lodge and Moose International are headquartered in Mooseheart, Illinois. It appears that in all matters in which a legal entity is needed, such as to hold property and employ workers, the corporate entity acts. Nevertheless, the Supreme Lodge of the World still exists outside the corporate structure for fraternal purposes, such as approving the laws by which the fraternity operates. Any demarcation line between corporate and fraternal structure is, however, difficult to ascertain and appears blurred for many purposes. For example, their constitution is styled "The Constitution of Moose International and the Supreme Lodge" and draws little distinction between the two organizations. This duality was addressed by independent auditors in their headquarters audit as the "Moose International, Inc. and Subsidiary" and thereafter they simply utilized the collective term "Fraternity."

With respect to the purpose for which the Supreme Lodge and Moose International were formed, their Constitution states:

The principle purpose for which the Supreme Lodge and Moose International are formed is to act as a governing body of and as headquarters or corporate structure, respectively, for a system of fraternal and charitable Lodges of the Loyal Order of Moose and Chapters of the Women of the Moose, along with other units and degrees, to be known in the aggregate as Moose International, in all matters which may be best administered by one governing body or by one corporate structure. Moose International may have, hold, own, purchase, pledge, mortgage, sell, and exchange such real and personal property as may be necessary and convenient in carrying out the purpose of the Supreme Lodge and of the Order.

Moose International has formed certain subsidiary corporations, including Mooseheart Child City and School, Inc., (a home and school for the care and training of qualified children and mothers), Moosehaven, Inc., (a home for qualified aged Moose members and/or their wives), Moose Charities, Inc., and Moose Foundation, Inc., (a corporation organized under Internal Revenue Code (IRC) Section 501(c)(3) for charitable, educational and scientific purposes and operating to support and carry out the purposes of the three previously mentioned subsidiaries).

While it appears the subsidiaries have their own employees, Moose International directly employs an indeterminate number of employees in conducting its affairs. Moose International employees for the most part work in Mooseheart, Illinois. Moose International hires, fires and

directs its employees without any apparent input from the local lodges. There is no interchange of employees with the lodges. Moose International employees have their own employee handbook setting forth many aspects governing their employment, which does not apply to lodge employees. They have certain benefits, such as health and dental insurance, and a retirement plan – none of which are enjoyed by employees working for Lodge 731.

Moose International is organized under IRC Section 501(c)(8). I take administrative notice that to be a non-profit exempt organization under this section of the Code, the exempt fraternal organization must operate under the lodge system or for the exclusive benefit of the members of a fraternal organization itself operating under the lodge system and providing some benefit to the members of the society, order or association. “Operating under the lodge system means carrying on activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters or the like.”<sup>3/</sup>

The organization’s constitution, bylaws and general laws of the Order are collected in one document, commonly referred to as the general laws. The general laws provide for the chartering of lodges of the Loyal Order of Moose and Chapters of the Women of the Moose. Detailed directives for forming and operating lodges are also found in these laws. When a new lodge is chartered, Moose International appoints the officers for the first term. Each lodge is to adopt its own bylaws, which are subject to approval by the General Governor of Moose International and must be consistent with laws or regulations adopted by the Supreme Lodge. Every lodge must itself incorporate if it has substantial assets, operates a social quarters or is otherwise directed to do so by the General Governor. While the term “social quarters” is not clearly defined in the general laws or otherwise in the record, it appears that this encompasses the social aspects of a lodge’s operation – such as those related to providing food, beverages and entertainment and generally occurring in an area of a lodge facility adapted to such activity.

If a lodge voluntarily dissolves or has its charter revoked, after the settling of its debts, all assets of the lodge, including property, become the property of Moose International. Lodges are to set, as a minimum, annual dues of \$30. A set portion of this -- currently \$14 -- is remitted to Moose International. The General Governor may require a lodge to set up a special checking account for the portion of dues to be remitted along with other funds that are for the benefit of the fraternity as a whole.

A “dispensation” (approval) is needed from the General Governor for 37 specific actions of a lodge that include many business/administrative activities of the lodge, such as entering into contracts, purchasing or entering into leases for property involving a commitment of more than \$5,000, borrowing unsecured funds, investing funds in a saving account or CD, encumbering assets, acquiring a lodge credit card, holding an activity off premises, and opening or maintaining a separate or special savings account. There are a variety of penalties which may result from a violation of the “laws of the Order” – the most severe available for a miscreant lodge is revocation of its charter. How such is to be legally enforced if not voluntarily complied with is, however, somewhat unclear as the general laws state, “No member, lodge or unit of the

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<sup>3/</sup> Internal Revenue Service (IRS) Publication 557 at page 50.

Order shall apply to any civil court or administrative agency for the enforcement of any right, or determination or any grievance, arising under or by virtue of the laws of the Order.”

The general laws provide for the manner in which lodge Board of Officers are elected. The Board of Officers may nominate a member to be Administrator, who is then voted on by the membership. The Administrator, as the title suggests, performs such administrative functions for the lodge as dealing with the checking account, keeping financial and membership records, and making the financial and membership reports required by Moose International.

Under the general laws, a lodge may establish a social quarters. The general laws set forth numerous directives involving the manner in which the social quarters are to be operated, including mandating that access to the social quarters is limited to “members of the Order” (from any lodge and apparently Women of the Moose), certain family members, a “lady” or “gentleman” friend, and prospective members. The social quarters is to be operated by the lodge’s house committee, which is made up essentially of the same individuals who comprise the lodge’s Board of Officers. The House Committee is required to employ a Social Quarter’s Manager. The Social Quarter’s Manager is authorized to employ help to operate the social quarters. The provision allowing for this contains the admonishment, “Neither the House Committee, nor the Social Quarter’s Manager shall enter into any employment contract with an employee. Unless prohibited by law, all employees (including the Social Quarters Manager) shall be employed ‘at will.’” Moose International’s stated position with respect to other employment matters is that employment issues are a matter for the lodge and Moose International will not give advice or become involved. This is reflected in Moose intranet postings attempting to provide answers to frequently asked questions.

Moose International offers certain training or mentoring for lodges. For example, Moose International offers classes to lodge officers for operating lodge or social quarters. Participation in such training is, however, voluntary and must be paid for by the lodge or participants. Moose International produces a number of publications for lodge officers and administrators which convey advice on best practices and operating procedures for lodges. Periodically, Moose International will send a representative to review a lodge’s finances and operations. An example of correspondence following such a review of Lodge 731 (which was apparently having a difficult time economically and was in arrears with respect to certain payments that were to be made to Moose International for insurance, dues and enrollment fees), takes on the tone and form of issuing mandates in many areas found deficient in the lodge’s operations.

While it is not precisely known when it was chartered, Lodge 731 was incorporated under the laws of the State of West Virginia in 1940. The corporation is a 501(c)(8) corporation. Its articles of incorporation state:

The membership of said corporation shall consist only of the members in good standing of said fraternal lodge association known as Point Pleasant Lodge No. 731, Loyal Order of Moose and none other. Acquisition of membership in the said fraternal lodge association known as Point Pleasant Lodge No. 731, Loyal Order of Moose, shall carry with it ipso-facto membership in this corporation, and there shall be no other way or means of becoming a member of this corporation.

As in the case of the parent body, the local lodge attempts to establish a dichotomy in its corporate papers between the fraternal aspects of the Order and the necessity of assuming some legally recognized form in which to operate. This is reflected in its articles of incorporation as follows:

The purpose for which this corporation is formed is to give corporate existence to the members of a fraternal lodge association known as Point Pleasant Lodge No. 731, Loyal Order of Moose, Inc., for the sole purpose of operating a club and social or lodge rooms; to purchase, take, hold, lease, rent, sell or mortgage personal property for the purpose of owning or operating a social club or lodge rooms, and to do all things incidental, necessary or convenient in the carrying out of the foregoing purposes. It is no part of the purpose of this corporation to have any part whatever in the exercise of the powers granted to said Point Pleasant Lodge No. 731, by Supreme Lodge of the World, Loyal Order of Moose, to operate a secret society or lodge under the laws and rituals of the said Loyal Order of Moose. The sole purpose of the corporation is to exercise property rights with reference to a social club or lodge rooms.

It appears from the record that with respect to any financial matters, contractual matters, employee related matters and property ownership, it is the corporate form that acts. Thus, I consider the corporation as the Employer involved in this proceeding rather than whatever might encompass the more incorporeal aspects of the Lodge associated with the Order.

Lodge 731 owns two buildings and one pavilion as well as the 47 acres on which they sit in Point Pleasant, West Virginia. One building is a two-bay garage with maintenance shop. The other building houses a ballroom, bingo room, a room utilized by a chapter by the Women of the Moose, a social quarters and an office area.

Although the record is somewhat unclear on the numbers, the Employer asserts in its brief that the lodge/social quarters currently employ three bartenders, two waitresses, a maintenance employee and a custodian. There is also a cook's position, which was vacant at the time of the hearing. The acting Lodge Administrator is Brice Gilpen. The Acting Social Quarters Manager is Jeff Summers. The bartenders, waitresses, and cook work primarily to service the social quarters and are under the supervision of Summers. The custodian and maintenance employee service the building and grounds and are supervised by Gilpen. An employee from either group may seek out Gilpen or Summers in the absence of one or the other. Summers and Gilpen perform the hiring, firing, discipline and scheduling of the respective employees under them. The House Committee and Board of Officers, in conjunction with the administrator and manager, set the wages and benefits for the respective employees in their chain of authority. The benefits of these employees are apparently limited to a 1-week vacation after a year and 2 weeks after 10 years.

The social quarters' operations appear to function essentially as a bar/restaurant. The lodge/social quarters orders its own food and alcohol and the lodge holds its own liquor license. Kitchen supplies and liquor are paid for out of ready cash or the lodge checking account. Other

day-to-day financial outlays by the Lodge are for such expenses as maintaining the lodge alarm system, pest control, phone service, grease disposal, municipal services (such as sewage water and trash collection) and utilities. The Lodge purchases its own office supplies and computer equipment. Moose International plays no part in these matters. A limited number of fraternal items, such as membership cards and lapel pins, are purchased from Moose International.

Lodge 731 holds two separate gaming licenses issued by West Virginia; one for video poker and one for raffles (primarily “pull tabs”). Under West Virginia law, the raffle license requires the holder to donate at least 80 percent of revenue generated (post-payout to winners) from the raffles to non-profit organizations. An example of a donation made by the lodge in this regard is one made to a local high school football team. In addition, certain events at the Lodge, such as a chili-making contest organized by the on-site Women of the Moose chapter, generate donations for Moose charities. The gambling and charitable events appear to be as much or more for entertainment and social camaraderie as to generate income for worthy causes. The Lodge also sponsors a Cub Scout Pack, and will allow its facilities on occasion to be utilized for certain activities by such groups as school children and the Girl Scouts.

Lodge 731 participates in certain of the insurance programs operated by Moose International, including a risk pooling of funds for personal injury claims, a fidelity bond program to cover its officers and directors, and an officers’ liability program. It does not participate in the Moose International workman’s compensation program, apparently due to some unique aspects of West Virginia law in this area. It has also arranged for its own insurance for property damage outside any insurance program run by Moose International.

### **III. THE JURISDICTIONAL ISSUE:**

#### **A. Lodge 731:**

The Board has previously taken jurisdiction over fraternal organizations based on the logic that an employing entity’s fraternal aspects do “not subordinate its business activities to insignificance.” *Polish National Alliance of the United States of North America v. NLRB*, 322 U.S. 643, 648 (1944). See also, *Association Canado-Americaine*, 72 NLRB 520 (1947); *Oklahoma State Union of the Farmers’ Educational and Cooperative Union of America*, 92 NLRB 248, 250 (1950). In those cases, however, the business activity upon which jurisdiction was based involved either insurance coverage for members and/or cooperative purchasing. In the instant case, the overriding business activity of at least Lodge 731 involves the operation of the Social Quarters which, other than the generation of dues, comprises much of the economic activity of the lodge. I view the operation of the Social Quarters as essentially the operation of a private social club. Private clubs providing food, drink and/or social activities for their members must meet the Board’s \$500,000 retail standard in order for jurisdiction to be asserted. See, e.g., *Bankers Club, Inc.*, 218 NLRB 22, 23 (1975); *Walnut Hills Country Club*, 145 NLRB 81 (1963). I therefore conclude that this is the appropriate standard in the instant case.

It appears from the record, that if membership dues and the proceeds from a recent loan are excluded from the gross amount of monies received by the Lodge, even if combined with revenue generated by the on-site Women of the Moose, the gross amount taken in from all sources does not meet the \$500,000 standard and neither party claims otherwise. The Board, in

determining whether the gross volume of business of a club meets the retail standard does not include members' dues and initiation fees not included as income derived from its retail operations. *Golf Course Inns*, 199 NLRB 541 (1972); *Rancho Los Coyotes Country Club*, 170 NLRB 1773 (1968); *Woodland Hills Country Club*, 146 NLRB 330, 331 (1964). With respect to the loan proceeds, Lodge 731 recently re-mortgaged its property to meet the arrearages to Moose International mentioned above and to perform some needed work on its main building, primarily replacement of the heating and air conditioning system. This re-mortgaging was approved by Moose International, but apparently contracting for the heating/air conditioning work and a change in checking accounts to one operated by the lending institution were not. While there is no clear guidance in the case law with respect to funds received as a result of this loan, I do not believe these proceeds should be included in the gross computation of revenue, especially since the money was the result of a one-time transaction and was not utilized for regular operating expenses. See, *Viewer Sponsored Television Foundation, Inc., d/b/a KVST-TV*, 217 NLRB 419, 420 (1975).

The Petitioner appears to assert that some standard other than the retail standard is appropriate because Lodge 731 should be considered a charitable organization. Initially I note that the community service aspects of the Lodge, certain activities the proceeds of which go to Moose operated charities, and the distribution of a certain percentage of gambling proceeds to other non-profits, appears ancillary to the Lodge's main purpose, as set forth in its articles of incorporation and confirmed in the record, "of operating a club and social or lodge rooms." I further note that Lodge 731 is not a 501(c)(3) charitable organization for IRS purposes. Finally, even if it were to be viewed as a charitable organization, this would do little to change my analysis and would have no impact on the outcome because there is no per se standard for the assertion of jurisdiction over a charity. In *St. Aloysius Home*, 224 NLRB 1344 (1977), the Board reversed its longstanding policy of not exercising jurisdiction over nonprofit institutions whose activities are essentially noncommercial in nature and are intimately connected with the charitable purposes of the institution. In so deciding it stated:

We have decided that a separate jurisdictional category encompassing all charitable, nonprofit, nonhealth-care institutions is unnecessary inasmuch as these institutions can be classified according to their substantive purposes, e.g., [St. Aloysius Home] is, for all intents and purposes, an institution involved with the specialized care and custody of children. Since the distinction between profit and nonprofit institutions, for jurisdictional purposes, has been eliminated, we see no reason to establish separate standards for institutions that seek to accomplish the same end but differ only in whether they are charitable or noncharitable. [224 NLRB at 1345.]

Thus, even were Lodge 731 considered a charitable organization, I would still be required to consider what constituted the substantive purpose of Lodge 731 and would arrive at the same conclusion – that it is predominantly a members only social club.<sup>4/</sup>

Based on the forgoing, I conclude that jurisdiction may not be asserted over Lodge 731 based on its own impact on commerce.

B. The Single Employer Issue:

The Petitioner contends that Moose International and Local Lodge 731 are a single employer. If this is the case, due to the activities of Moose International, the single employer's gross revenues and economic activity across state lines would meet any standard set by the Board for asserting jurisdiction.

The Board's test for determining whether employers constitute a single employer is succinctly set forth in *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283-1284 (2001):

Four criteria determine whether a single employer relationship exists: (1) common ownership; (2) common management; (3) functional interrelation of operations; and (4) centralized control of labor relations. It is well established that not all of these criteria need to be present to establish single employer status. Single employer status ultimately depends on "all the circumstances of a case" and is characterized by the absence of an "arms-length relationship found among unintegrated companies." The Board has generally held that the most critical factor is centralized control over labor relations. Common ownership, while significant, is not determinative in the absence of centralized control over labor relations. (Footnotes omitted).

1. The facts with respect to each criteria:

*(1) common ownership:*

The record does not reflect any current ownership interest by Moose International in the real or personal property at Lodge 731. There is, however, the possibility that the property of the Lodge will become that of Moose International if the Lodge is dissolved or its charter revoked.

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<sup>4/</sup> For example, in *YMCA of Pikes Peak Region*, 291 NLRB 998 (1988), the employing entity was described as a "volunteer, nonprofit, charitable, membership organization . . . ." Nevertheless, as here, the retail standard was found to be the applicable standard since the core of its operations did "not differ substantially from that of any membership club devoted to physical fitness." 291 NLRB at 1000-1001.

The Petitioner notes that in cases involving unions as employers, the non-retail standard is used and that in such cases dues may be considered commerce. Yet the Petitioner offers no explanation as to why I should consider Lodge 731's situation as akin to that of a labor organization, other than its utilization of dues payments for support. I do not see a basis for analogizing the instant situation to that of a union employer, especially when the bulk of what goes on at Lodge 731 is clearly that of a members only social club – a category of employer with respect to which the Board has provided guidance as to the jurisdictional standard to be used.



*(2) common management:*

There are no agents of Moose International who are common managers of Lodge 731's day-to-day operations with the Lodge's own managers. Nevertheless, the parameters within which Lodge 731 is to operate are set to a great degree by the general laws of the Order. As noted previously, many of the actions of Lodge 731, if they are to be taken by the Lodge, need to be approved by the Moose International's Governor General. However, as indicated by the recent contracting for heating and air conditioning work and switched checking account without such approval, the directives to seek approval may not be always followed. Training is offered, oversight provided and suggestions/admonitions given with respect to the running of Lodge 731 by Moose International. Reports on membership and finances are regularly made to Moose International.

*(3) functional interrelation of operations:*

Lodge 731 and Moose International are bound to the same general fraternal laws. They are both tied to the same fraternal structure which has such consequences as allowing non-Lodge 731 members of the Order to utilize Lodge 731's facilities and its members to use the facilities of other lodges. Lodge 731 procures certain of its insurance from Moose International or one of its allied corporations and participates in a pooling of funds with other lodges to help cover personal injury claims.

Moose International relies on the local lodges to collect its dues and fees. Greater economic success of Lodge 731's social quarters will not, however, create a greater economic flow such as that from a subsidiary corporation to its parent.

*(4) centralized control of labor relations:*

The hiring, firing, disciplining, scheduling and direction of Lodge 731's employees is performed exclusively by Lodge 731 management. The wages and benefits of these individuals are set by Lodge 731 personnel. The work rules and codes of conduct of Lodge 731 employees are set by Lodge 731. Employee payroll is handled by Lodge 731 for its own employees. Employee records are kept by Lodge 731. There is no evidence that Moose International has any input – including through any of the general laws or issuance of advice – into any of these matters. Indeed, whenever advice is sought on any such matters by any local lodge, it appears that the lodge is advised that Moose International may only address fraternal issues and staff issues are not such issues and, therefore, Moose International does not get involve in personnel or employment matters in local lodges.

Nevertheless, as noted previously, the general law allowing for the operation of a social quarters prohibits Lodge 731 from entering into any employment contract with any employee and, unless prohibited by law, all employment is to be at will. Finally it appears that approval of the Moose International Governor General is required for entering into a contract. With respect to this latter requirement, it is somewhat unclear whether this would cover entering into a collective-bargaining agreement. It was specifically noted, however, that it would be interpreted as covering contracting with a social quarters manager for his/her services. Since it is viewed as

applicable to that employment related matter, there is no reason to assume that it would not be applicable to a union contract.

## 2. Analysis and Conclusion:

It appears that there is no common ownership between Moose International and Lodge 731 but a fairly high degree of control by Moose International of the manner in which Lodge 731 is operated and some functional interrelation of operations. With respect to any centralized control of labor relations, it appears that there is no current control over the ongoing labor relations between Lodge 731 and its employees. There is some passive control in that the general laws prohibit entering into a contract with an employee and that all employees must, in the absence of legal reason otherwise, be at will. Moreover, were any organizing attempt successful, it appears likely that Lodge 731 would need the approval of the Governor General to enter into any collective-bargaining agreement that may be reached.

In sum, the current lack of common ownership militates against a finding of a single employer relationship, yet the common management and interrelation of operations which exist pulls in the opposite direction. Thus, control of labor relations, which the Board has held to be the most critical criteria, is the determining factor in this case. Unfortunately the facts relevant to this criteria are not wholly without ambiguity. I conclude, however, that Moose International's lack of active control of any of the myriad of issues arising from the employer/employee relationship dictates that Moose International is not a single employer with Lodge 731 of the employees in issue. The general laws touch upon only a very limited area of the employees' terms and conditions of employment. While it is possible that Moose International might have some control over Lodge 731 entering into a collective-bargaining agreement, this potentiality is not sufficient, by itself, to establish actual or active control. The Board will find a single employer relationship only if one of the entities "exercises actual or active control over the day-to-day operations or labor relations of the other." *Dow Chemical Co.*, 326 NLRB 288 (1998). See also, *Mercy General Health Partners*, 331 NLRB 783, 784-785 (2000). I conclude that since such day-to-day control is lacking in the instant case, Moose International is not a single employer with Lodge 731.<sup>5/</sup>

## C. Summary

For the reasons set forth above, I conclude that Lodge 731 is the sole employer of the employees involved in this matter and that the appropriate standard for the assertion of

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<sup>5/</sup> In declining to include Moose International's economic activity in my consideration of whether Lodge 731 meets the appropriate jurisdictional standard, I am mindful of cases where the Board has considered the impact and implications of any labor dispute on more than the direct employer of the employees in issue as well as those where, despite the dollar amounts involved, the activities of the employer were found to have only a localized impact on commerce. See, e.g., *Trade Winds Motor Hotel & Restaurant*, 140 NLRB 567 (1963) and *Ohio Public Interest Campaign*, 284 NLRB 281 (1987), respectively. In support of my determination on jurisdiction in this case, I note that due to the local character and activities of this Lodge, the impact of any labor dispute that may develop at Lodge 731 would in all likelihood have little, if any, effect on commerce beyond the economic sphere in which Lodge 731 acts.

jurisdiction is the retail standard requiring \$500,000 annual gross revenue. Moreover, the record indicates that Lodge 731 does not meet this standard. Accordingly, I will dismiss the petition.

#### **IV. CONCLUSION AND FINDING**

Based upon the entire record in this matter and in accordance with the discussions above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. It will not effectuate the purposes of the Act to assert jurisdiction in this case.

#### **V. ORDER**

The petition filed in this matter is hereby dismissed.

#### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EST) on **November 23, 2004**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 9<sup>th</sup> day of November 2004.

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Region 9, National Labor Relations Board  
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#### **Classification Index**

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